

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

BLACKBIRD TECH LLC d/b/a BLACKBIRD TECHNOLOGIES,  Plaintiff,  v.  ELB ELECTRONICS, INC.,  Defendant.	C.A. No. 15-cv-056-RGA
BLACKBIRD TECH LLC d/b/a BLACKBIRD TECHNOLOGIES,  Plaintiff,  v.  ETI SOLID STATE LIGHTING, INC.,  Defendant.	C.A. No. 15-cv-057-RGA
BLACKBIRD TECH LLC d/b/a BLACKBIRD TECHNOLOGIES,  Plaintiff,  v.  FEIT ELECTRIC COMPANY, INC.,  Defendant.	C.A. No. 15-cv-058-RGA

**STIPULATION AND [PROPOSED] ORDER OF  
NON-INFRINGEMENT AND CONSOLIDATION**

Plaintiff Blackbird Tech LLC d/b/a Blackbird Technologies (“Plaintiff”) and Defendants ELB Electronics, Inc., Feit Electric Company, Inc., and ETi Solid State Lighting Inc. (collectively, “Defendants”), to conserve judicial and party resources by limiting further litigation in this Court and to permit any party to seek appellate review of this Court’s claim

construction order as to U.S. Patent. No. 7,086,747 (the “’747 patent”), hereby stipulate and agree, subject to the Court’s approval, that:

1. Plaintiff accused Defendants of infringing claims 12 and 29 of the ’747 patent, directly or indirectly, by, among other acts, making, using, offering to sell, selling, or importing into the United States the products set forth in Exhibit A (the “Accused Products”). The Accused Products are LED lighting products that replace conventional fluorescent bulbs in lighting fixtures.

2. Defendants denied Plaintiff’s allegations and asserted, among other defenses, the defense of non-infringement.

3. On November 4, 2016, Plaintiff withdrew its allegations of infringement of claim 29 of the ’747 patent leaving claim 12 as the only asserted claim.

4. On December 28, 2016, the Court issued a Memorandum Opinion and, on January 4, 2017, an Order (the “Order”) construing, among other terms, the term “attachment surface” in claim 12 of the ’747 patent. The Court construed the term to mean “layer of the housing that is secured to the ballast cover.”

5. Plaintiff stipulates that it cannot meet its burden of proving that the Accused Products infringe the ’747 patent under the Court’s construction of “attachment surface” because the Accused Products do not contain an “attachment surface” that is “secured to the ballast cover” of an existing light fixture.

6. The parties reserve all other rights and arguments. The parties also reserve their rights upon any remand to supplement their respective infringement and invalidity contentions in light of the Court’s claim construction Order and/or the U.S. Court of Appeals for the Federal Circuit’s decision.

7. In the event the U.S. Court of Appeals for the Federal Circuit dismisses Plaintiff's appeal as premature, Plaintiff reserves the right to undertake further proceedings in this Court on remand to complete the record for appeal.

8. To facilitate a single appeal, the parties respectfully request that *Blackbird Tech LLC d/b/a Blackbird Technologies v. ETI Solid State Lighting, Inc.*, C.A. No. 15-cv-057-RGA and *Blackbird Tech LLC d/b/a Blackbird Technologies v. Feit Electric Company, Inc.*, C.A. No. 15-cv-058-RGA be consolidated under *Blackbird Tech LLC d/b/a Blackbird Technologies v. ELB Electronics, Inc.*, C.A. No. 15-cv-056-RGA for all pretrial purposes, without prejudice to any party's right to request that the cases be severed upon remand, and that the Proposed Final Judgment attached hereto as Exhibit B be entered in that case.

9. The time to file any motion for attorneys' fees is extended until thirty days after the Federal Circuit issues its final mandate following exhaustion of all appeals.

Dated: February 22, 2017

Respectfully submitted,

OF COUNSEL:

Wendy Verlander  
wverlander@blackbird-tech.com  
Christopher Freeman  
cfreeman@blackbird-tech.com  
Sean K. Thompson  
sthompson@blackbird-tech.com  
Blackbird Tech LLC d/b/a  
Blackbird Technologies  
One Boston Place, Suite 2600  
Boston, MA 02108  
617.307.7100

STAMOULIS & WEINBLATT LLC

/s/ Stamatios Stamoulis  
Stamatios Stamoulis #4606  
stamoulis@swdelaw.com  
Richard C. Weinblatt #5080  
weinblatt@swdelaw.com  
Two Fox Point Centre  
6 Denny Road, Suite 307  
Wilmington, DE 19809  
Telephone: (302) 999-1540

*Attorneys for Plaintiff*  
Blackbird Tech LLC d/b/a  
Blackbird Technologies

MORRIS, NICHOLS, ARSHT & TUNNELL  
LLP

OF COUNSEL:

John M. Hintz  
MAYNARD, COOPER & GALE, P.C.  
The Fred F. French Building  
551 Fifth Avenue – Suite 2000  
New York, NY 10176  
(646) 609-9284  
jhintz@maynardcooper.com

By: /s/ Michael J. Flynn  
Karen Jacobs (#2881)  
Michael J. Flynn (#5333)  
1201 North Market Street  
P.O. Box 1347  
Wilmington, DE 19899  
(302) 351-9661  
kjacobs@mnat.com  
mflynn@mnat.com

*Attorneys for Defendants ELB Electronics, Inc.,  
and Feit Electric Company, Inc.*

POTTER ANDERSON & CORROON LLP

OF COUNSEL:

D. Peter Hochberg  
Walter | Haverfield LLP  
The Tower at Erieview  
1301 East 9th Street, Suite 3500  
Cleveland, OH 44114-1821  
(216) 928-2903  
(216) 916-2445  
dphochberg@walterhav.com

By: /s/ Philip A. Rovner  
Philip A. Rovner (#3215)  
Jonathan A. Choa (#5319)  
Alan R. Silverstein (#5066)  
Hercules Plaza  
P.O. Box 951  
Wilmington, DE 19899  
(302) 984-6000  
provner@potteranderson.com  
jchoa@potteranderson.com  
asilverstein@potteranderson.com

*Attorneys for Defendant ETi Solid State  
Lighting Inc.*

IT IS SO ORDERED on this \_\_\_\_\_ day of \_\_\_\_\_, 2017

---

THE HONORABLE RICHARD G. ANDREWS